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Applicant	:	Frank Jakubaitis	
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APPEAL BRIEF

Dear Sir:

Appellant submits, the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Appellant also submits herewith our check number 0088 in the amount of $2090.00 to cover the cost of filing the opening brief and a four month extension of time as required by 37 C.F.R. § 41.20(1)(b). Please charge any additional fees or credit any overpayment to our deposit Account No.02-2666. A duplicate copy of the Fee Transmittal is enclosed for this purpose.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the full interest in the invention, Liquid Acoustics Ventures, Inc., located at 6900 Aragon Circle, Buena Park CA, 90620.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the instant appeal.

III. STATUS OF CLAIMS

Claims 1, 4-9, and 12-15 are pending in the application and were finally rejected in a Final Office Action mailed April 1, 2005. Claims 1, 4-9, and 12-15 are the subject of this appeal. A copy of claims 1, 4-9, and 12-15 as they stand on appeal are set forth in Appendix A.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been made after receipt of the Final Office Action on April 1, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

INDEPENDENT CLAIMS 1 AND 9

Appellant's invention as set forth in independent claims 1 and 9 generally relate to a method and a system for distributing digital works. Utilizing method claim 1 as an example, a method for distributing digital works 202 among a retail merchant having a merchant node 150, a remote server 200, and a customer at a customer node 100 is disclosed.[1] Each digital work 202 has identification data associated with each digital work 202.[2] The remote server 200 may be intermittently coupled through a communication link which includes a communication network 12 to the customer node 100.[3]

[1] Specification, page 5, lines 5-10, Figure 1.
[2] Specification, page 8, lines 8-11.
[3] Specification, page 5, lines 5-12, Figure 1.

The method comprises various steps. In one step, digital works 202 and their associated identification data are stored on a memory of the remote server 200.[4]

A package 300 including a card associated with the desired one of the digital works 202 may be purchased from a retail merchant, in which, the card includes a card identifier 302 that is displayed on the outer surface of the card and the card identifier may be a code that includes the desired digital work's identification data to uniquely identify the digital work and the package and the card being purchased.[5] The outer surface of the card or the package may further display a description 306 of the content of the digital work to be downloaded.[6]

A request from the merchant node 150 associated with the retail merchant is sent to a remote server 200 to set the status of the desired digital work 202 as available for one-time access based on the card identifier of the card associated with the digital work.[7] The remote sever 200 receives the request and searches the digital works 202 stored on the remote server 200 for the desired digital work specified by the card identifier and the received request from the merchant node 150 and sets the status of the desired digital work 202 as available for access.[8]

A request is sent to access the desired digital work 202 from the customer node 100 through the communication network 12 to the remote server 200 in which the request specifies the desired digital works identification data included in the card identifier displayed on the outer surfaces of the purchased package.[9] The remote server 200 receives a request to access the desired digital work.[10]

The remote server 200 searches the digital works 202 stored on the remote server 200 for the desired digital works specified by the identification data associated with the card identifier displayed on the outer surface of the purchased card and the received request, identifies the digital work 202 based upon the received identification data, and transmits the desired digital work from the remote server 200 through the communication network 12 to the customer node 100.[11]

The customer node 100 receives the desired digital work 202 and stores the desired digital work on a memory of the customer node 100 such that the digital work 202 is available

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[4] Specification, page 7, lines 13-21, Figure 1.
[5] Specification, page 8, line 17- page 9, line 2, Figures 1, 2A, 2B.
[6] Specification, page 9, lines 3-6.
[7] Specification, page 9, lines 18-23, Figure 1.
[8] Specification, page 9, line 21- page 10, line 2, Figure 1.
[9] Specification, page 11, lines 10- page 12, line 3, Figure 1.
[10] Specification, page 12, lines 3-10, Figure 1.
[11] Id.

for subsequent use by the customer at the customer node 100 after the customer logs off of the remote server 200.[12]

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 6-9, and 13-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,995,105 issued to Reber et al. (hereinafter Reber) in view of U.S. Patent No. 5,918,909 issued to Fiala et al. (hereinafter Fiala)and further in view of U.S. Patent No. 4,528,643 issued to Freeny (hereinafter Freeny).

VII. ARGUMENTS

A. Claims 1, 6-9, and 13-19 are not rendered obvious under 35 U.S.C. § 103(a) over Reber in view of Fiala and further in view of Freeny.

Appellant respectfully submits that independent claims 1 and 9 are not rendered obvious by Reber in view of Fiala and further in view of Freeny. Independent claims 1 and 9 stand or fall together. Independent claim 1 will be used as the representative claim.

In the Final Office Action of April 1, 2005, the Examiner held that independent claims 1 and 9 are rendered obvious over Reber in view of Fiala and even further in view of Freeny. Appellant respectfully submits that the Examiner is in error and respectfully requests that the Board reverse this finding.

As will be discussed, Appellant respectfully submits that Reber, Fiala, and Freeny are not properly combinable, and even if they were, the limitations of amended independent claims 1 and 9 are not taught, suggested, or rendered obvious by the combination of Reber, in view of Fiala, and even further in view of Freeny.

Further, Appellant respectfully submits that Reber teaches away from the limitations of Appellant's independent claims 1 and 9. Moreover, Appellant respectfully submits that the intended function of Fiala would be destroyed if it were to be modified to attempt to teach or suggest Appellant's amended independent claims 1 and 9, such that Fiala also teaches away from Appellant's claims.

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[12] Id.

For these reasons, Appellant respectfully submits that a prima facie case of obviousness has not been met.

Appellant respectfully traverses the Final Office Action's §103 obviousness rejections in their entirety, in light of the following remarks. As stated in MPEP §2141.03:

> A prima facie obviousness rejection requires the three basic criteria be met. First, there must be some teaching, suggestion, or motivation, either in the references of themselves or in the knowledge generally available to one skilled in the art, to modify the reference or to combine the references. Second, there must be some reasonable expectation of success. Finally, the prior art reference, or references when combined, *must teach all the claim limitations.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, *and not based on the Applicant's disclosure*. MPEP §2141.03. (Emphasis added).

MPEP §2141.03 further warns that *impermissible hindsight* must be avoided.

Further, with regards to obviousness, as aptly stated by the Federal Circuit in In re Kotzab, 55 U.S.P.Q.2D (BNA) 1313, 1316-1317 (Fed. Cir. 2000):

> Most if not all inventions arise from a combination of old elements. Thus every element of a claimed invention may often be found in the prior art. *However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, *there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant.* (Emphasis added).

Moreover, as stated in the MPEP, "[i]t is improper to combine references where the references teach away from their combination." MPEP §2145 (emphasis added).

Looking at Appellant's amended independent claims in view of the Office Action and the alleged teachings of Reber, Appellant respectfully submits that it is clear that Appellant's independent claims 1 and 9 are not rendered obvious by Reber, in view of Fiala, and even further in view of Freeny.

This is because the Reber, Fiala, and Freeny references are not properly combinable and even if they were, there combination would still not teach or suggest the claim limitations of Appellant's independent claims 1 and 9.

Utilizing Appellant's independent claim 1 as an example, independent claim 1 is directed to a method for distributing *digital works* among a retail merchant having a merchant node, a remote server, and a customer at a customer node in which the method comprises the steps of...*storing the digital works* and their associated identification data on a memory of a remote

server...*purchasing from the retail merchant a package including a card associated with the desired one of the digital works*...wherein the card includes a card identifier displayed on an outer surface of the card...the card identifier being a code that includes the *desired digital works identification data to uniquely identify the digital work and the card being purchased*...the outer surface of the card or package further *displaying a description of the content of the digital work to be downloaded*...and *sending a request from a merchant node associated with the retail merchant to the remote server to set a status of the desired digital work as available for one-time access* based on the card identifier of the card associated with the digital work...*receiving at the remote server the request to access the desired digital work...searching the digital works stored on the remote server for the desired digital work specified by the identification data* associated with the card identifier displayed on the outer surface of the purchased card in the received request...transmitting the desired digital work from the remote server through the communications network to the customer node wherein the desired digital work *is received at the customer node and stored on a memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server.*

To begin with, Reber relates to a very different invention. As set forth in Reber, Reber relates to a network navigation device that includes a human viewable image intuitively associated with a resource and machine-readable data for navigating to an electronic address...A user accesses the resource by reading the machine-readable data using a data reader, rather than by typing in an electronic address...As a result, the addressing format and the address itself become more transparent to the user...Consequently, the problem of address complexity is addressed...(Reber, column 2, lines 38-49, emphasis added).

At the outset, contrary to the Final Office Action's assertion, Appellant respectfully submits that there is no teaching or suggestion in Reber *of digital works and/or packages or cards displaying a description of the content of digital work to be downloaded.*

It should be noted in Appellant's patent application that examples of *digital works* are given. On page 4 of Appellant's patent application it states: "The digital work may be a book, a periodical subscription (such as a newspaper or magazine), a song or collection of songs, a movie, a software program, or the like."

Further, as the Final Office Action acknowledges, Reber does not teach or suggest *purchasing from a retail merchant a package including a card associated with a desired digital*

work, sending a request from a merchant node associated with the retail merchant to a remote server to set a status of a desired digital work available for one-time access and wherein *a desired digital work is received at the customer node and stored on a memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server.*

In contrast to the invention set forth in Appellant's independent claims 1 and 9, Reber relates to a navigation device 10 having a first human-viewable image that is indicative of a resource in an electronic network 20...The second human-viewable image 18 is indicative of a service which provides the resource to a network access apparatus 22 via the electronic network 20...The machine-readable data 16 provides data which identifies the resource to the service (See generally Reber, column 2, lines 57-column 2, line 3, emphasis added).

An example in Reber is given of a first human-viewable image 42 that includes information which indicates to an end user that the network navigation device can be utilized to link to a resource from or about Motorola, Inc...For this purpose, included in the human viewable image 42 are textual information such as "Motorola"...The second human-viewable image 44 includes a logo which identifies a service which provides the resource to the end user...In this embodiment, the logo identifies a linking service provided at a node...on the World Wide Web (Reber, column 5, lines 59- column 6, line 10, emphasis added).

The machine readable data 46 includes a bar code representative of a first URL for the node which provides the linking service...And a second URL for the Motorola home page on the World Wide Web...(Reber, column 6, lines 10-14).

Thus, Reber relates to a network navigation device having human-viewable images associated with a resource (e.g. a web-page) and machine-readable data for automatically navigating to that electronic address (e.g. of the web-page) when it is read by a data device such that a user does not have to type in an electronic address or other information.

This is very different than Appellant's claimed invention as set forth in independent claims 1 and 9 in which a user may *send a request to access a desired digital work from a customer node* through a communications network to a remote server, in which the request specifies the desired digital work's identification data included in the card identifier displayed on the outer surface of the purchased package. In some embodiments, Appellant's claimed invention typically requires that the user type in identification data after previously manually logging onto a website.

Thus, Reber teaches a very different invention than that described in the limitations of Appellant's independent claims 1 and 9.

In view of the above, Appellant respectfully submits that Reber does not teach or suggest purchasing from a retail merchant a package including a card associated with the *desired digital work* in which the card includes a card identifier being displayed on the outer surface of the card that includes a code having the *desired digital work's* identification data to uniquely identify a digital work and the package and card being purchased. Nor does Reber teach or suggest an outer surface of a card or package further displaying a description of content of a *digital work* to be downloaded.

In fact, Reber does not teach or suggest the purchasing of *digital works*, via a card, or sending a request to access the desired digital work from a customer node or storing the desired digital work on a memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off the remote server.

This is because Reber does not relate to the purchase, authorization for purchase, and transmission of *digital works* to customers at their customer node. Reber is related to a totally different invention for enabling access to a resource web page by utilizing a data reader to automatically link a user to a web-site.

Appellant respectfully submits that Reber does not teach or suggest a method for distributing digital works among a retail merchant having a merchant node, a remote server, and customer on a customer node as set forth in Appellant's independent claims 1 and 9, because, Reber is not concerned with *digital works*, as previously discussed.

As the Final Office Action acknowledges on page 6: "Reber, however, does not disclose purchasing from a retail merchant a card associated with the desired goods or services...Fiala teaches a package for holding a data encoded card associated with a metered account, displaying the package/card on a merchant's display rack, and a package-card arrangement depicting the card as integral part of the package." The Final Office Action on page 7 further acknowledges Reber: "does not disclose sending a request from a merchant node to the remote server to set a status of the desired goods or services as available for access based on the package identifier."

As a motivation to combine Reber and Fiala, the Final Office Action states on page 6: "Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Reber to disclose purchasing from a retail merchant a package

including a card associated with desired goods or services as taught by Fiala, in order to provide a purchasing mechanism for the prepaid card, and thereby attract customers to the store and service willing to pay for prepaid access to digital content." (Emphasis Added).

The Final Office Action on page 7 further states: "...it would have been obvious...to modify the method of Reber to implement retailer activation as taught by Fiala, in order to activate the prepaid card sold by the retailer, and thereby enable customers to access the digital content sold through the retail establishment." (Emphasis Added).

Appellant respectfully submits that this motivation is not proper because Reber actually teaches away from this motivation and Appellant's independent claims 1 and 9. As previously discussed, Reber is directed to providing easy access to a web-site resource - not purchasing a card at a retailer and authorizing access to a digital work for the purchaser of the card. In fact, Reber directly teaches away from this.

As stated in column 7, lines 9-39 of Reber:

> The use of a printed image and printed data on a paper or cardboard substrate, such as in FIGS. 2 and 4, provides a number of advantages. A first advantage is that the resulting network navigation device can be produced inexpensively for wide distribution. For example, these network navigation devices can be: (i) included as inserts in magazines, newspapers, or other publications; (ii) stacked into decks and packaged for distribution by mail or for marketing in stores; and/or (iii) distributed as one distributes business cards...In addition, the network navigation devices can be collected and traded in a manner similar to trading cards...In addition, the use of a printed image and printed data allows for network navigation devices to be formed on pages of a book, magazine, newspaper, or other publication. In general, each page can define a single network navigation device, or can define a plurality of network navigation devices. If desired, a page defining a plurality of network navigation devices can be perforated to allow for separation into individual network navigation devices....In one application, the printed image can include a figure in a book or the like. Here, the printed data may be utilized to link a user to a resource having information associated with the figure...

Thus, as set forth in Reber itself, the navigation devices of Reber are meant to be distributed freely to potential customer through inserts in magazines, books, newspapers, through the mail, distributed freely as business cards, etc. They are not, as set forth in the Examiner's motivation, to be purchased in a retail store and to implement retailer activation. Their advantage is that they are inexpensive and can be distributed freely to direct people to a resource web-site.

Thus, Reber directly teaches away from using the navigation devices in a retail or purchasing manner in order to approximate Appellant's independent claims, such as: *purchasing from a retail merchant a package including a card associated with a desired digital work...sending a request from a merchant node associated with the retail merchant to a remote server to set a status of a desired digital work as available for one-time access, etc.*

It is a basic tenant of a prima facie case of obviousness that "[i]t is improper to combine references where the references *teach away* from their combination." MPEP § 2145 (emphasis added).

Accordingly, Appellant respectfully submits that because Reber directly teaches away from the Examiner's proposed combination with Fiala to teach Appellant's claims limitations, such that there is no motivation for such a combination, that therefore, Reber and Fiala are not properly combinable to approximate Appellant's independent claims 1 and 9. Therefore, Appellant's independent claims 1 and 9 cannot be rendered obvious over Reber in view of Fiala.

Moreover, Appellant respectfully submits that, even if Reber was properly combinable with Fiala, as previously discussed, this combination would still not teach the Appellant's claim limitations. In fact, Fiala likewise teaches away from a combination with Reber to approximate Appellant's claim limitations, as will be discussed.

Appellant respectfully submits that Fiala teaches:

> "The present invention relates, in general, to packaging for well-known pre-paid debit cards...Such debit cards are associated with a pre-paid metered account, and the account is debited as purchases are made by a customer...In particular, the present invention relates to a package for holding a data-encoded card associated with a metered account and a method of using the package and card on the nation to activate the metered account with a certain pre-determined value at the time of purchase of the card and package combination" (Fiala, column 1, lines 26-36) (emphasis added).

Appellant respectfully submits that Fiala relates to pre-paid debit cards to enable metered accounts for the purpose of purchasing goods and services.

In fact, there is no teaching or suggestion of Fiala of *digital works, packages or cards displaying a description of the content of a digital work to be downloaded, sending a request from a merchant node associated with the retail merchant to a remote server to set the status of a desired digital work as available for one-time access.*

Further, as the Final Office Action, acknowledges, Fiala does not teach or suggest *receiving at a customer node a digital work and storing the digital work on a memory of the*

customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server.

Appellant respectfully submits that Fiala is directed towards a completely different invention and as will be discussed, Fiala's intended function would be destroyed by trying to attempt to modify it in combination with Reber to in hindsight try to attempt to piece together various sections of these reference in an attempt to teach or suggest Appellant's independent claims 1 and 9, such that Fiala teaches away from a combination with Reber.

Appellant respectfully submits that Fiala is not related at all to *digital works* but only pre-paid debit cards for pre-paid metered accounts with a certain pre-determined amount of value.

Thus, firstly, Fiala does not deal with digital works at all. Secondly, Fiala is directed to pre-paid debit cards to activate metered accounts with a certain pre-determined value at the time of purchase for multiple uses.

As set forth in Fiala:

> "Once activated, the metered account is credited with a certain pre-determined balance, and any person having the PIN number P can subsequently be provided with goods or services having a total value up to the value of the certain pre-determined balance simply by providing the PIN number each time a transaction is desired" (Column 4, lines 65-67, column 5, lines 1-4) (emphasis added).

As particularly stated in Fiala, Fiala is directed towards a metered account with a predetermined balance for multiple transactions.

Thus, Fiala's intended function of providing a metered account with a predetermined balance for multiple transactions would be destroyed by trying to modify it to teach sending a request from a merchant node associated with a retail merchant to a remote server to *set a status of a desired digital work as available for one-time access.*

It is a basic tenant of a prima facie case of obviousness that if a prior art reference is cited that requires modification in order to meet the claimed invention, or requires some modification in order to be properly combined with another reference, and if such modification destroys the purpose or intended function of the invention disclosed in the reference, then the references are not properly combinable. It is further a basic tenant of a prima facie case of obviousness that "[i]t is improper to combine references where the references *teach away* from their combination." MPEP § 2145 (emphasis added).

As previously discussed in detail, Appellant respectfully submits that Fiala nowhere teaches or suggests purchasing from a retail merchant a package including a card wherein the

card is associated with a *digital work*...Fiala is not in any way related to *digital works*. There is quite simply no teaching or suggestion in Fiala of these limitations. Further, as previously discussed, the intended function of Fiala would be destroyed if it were tried to be modified away from a pre-paid debit card with a metered account for multiple transactions for goods and services to a *one-time access* based on a card identifier of a card for a *digital work*.

In fact, Fiala nowhere teaches or suggests digital works, sending requests to merchant nodes for digital works, searching digital works stored on a remote server for desired digital work specified by a card, etc. This is because Fiala does not deal with digital works.

In view of the above, Appellant respectfully submits that the Examiner's proposed combination of Reber and Fiala is untenable. Both Reber and Fiala teach away from the Examiner's proposed combination to approximate Appellant's independent claims. Moreover, as previously discussed, even if Reber and Fiala were combinable, they would still not teach the limitations as set forth in Appellant's independent claims 1 and 9.

Lastly, in attempt to, in hindsight, reconstruct Appellant's independent claims 1 and 9, the Examiner attempts to combine Reber, in view of Fiala, and even further in view of Freeny.

On pages 7-8 of the Final Office Action, the Office Action alleges that Freeny teaches consumers pre-paying for digital content using a computer remotely connected to a computer managing and distributing on-line content, delivering content to a consumer's home electronic system, and further teaches a consumers home as a point of sale location.

However, in Appellant's reading of Freeny, it is apparent that Freeny teaches a plurality of "information manufacturing machines 14...located at a point of sale location and each point of sale location is located remotely with respect to the other point of sale locations in the system 10...The information control machine 12 is located at a remote location with respect to each of the point of sale locations and with respect to the information manufacturing machines 14...Each information control machine 12 is located at a remote location with respect to each of the point of sale locations...The point of sale location is a location where a consumer goes to purchase material objects embodying predetermined or pre-selected information." (Freeny, column 5, lines 32-50, emphasis added).

It appears from Appellant's reading of Freeny that Freeny teaches a point of sale location to which a customer goes to purchase material objects (e.g. digital information stored on some sort of storage device) which they can later use at home.

Appellant respectfully submits that even if Reber, Fiala, and now Freeny, were properly combinable, their combination would still not teach or suggest the admitted missing claim limitations related to: *storing a desired digital work on a memory of the customer node such that digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server.*

Thus, Appellant respectfully submits that the very reason that Freeny is cited to teach storing the desired digital work on a memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off the remote server is in error. Therefore, Appellant respectfully traverses this assertion and respectfully submits that this limitation is not taught or suggested by Freeny.

Freeny, like Fiala, and like Reber is directed towards a totally different invention and even if it were combinable with Fiala and Reber, this three-way combination of references would still not teach or suggest Appellant's independent claims 1 and 9. In fact, the primary reference Reber, directly teaches away from the Examiner's proposed combination, as previously discussed.

Thus, as outlined in detail above, the three reference cited by the Examiner, Reber, Fiala, and Freeny, are not properly combinable, and even if they were, there combination would still not teach or suggest Appellant's claim limitations as set forth in independent claims 1 and 9.

Therefore, based on the above, Appellant respectfully submits that independent claims 1 and 9 are not rendered obvious over Reber in view of Fiala and even further in view of Freeny and are clearly patentable.

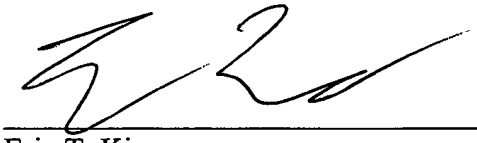
Accordingly, Appellant respectfully submits that independent claims 1 and 9 and their respective dependent claims should be allowable over the cited prior art references.

VIII. CONCLUSION

Appellant respectfully requests that the Board reverse the rejections of Claims 1, 4-9, and 12-15 under 35 U.S.C. § 103(a) and direct the Examiner to enter a Notice of Allowance for Claims 1, 4-9, and 12-15.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



Dated: October 13, 2005

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IX. CLAIM APPENDIX

The claims of the present application which are involved in this appeal are as follows:

1. (Previously Presented) A method for distributing digital works among a retail merchant having a merchant node, a remote server, and a customer at a customer node, each digital work having identification data associated therewith, the remote server being intermittently coupled through a communications link which includes a communications network to the customer node, the method comprising the steps of:

storing the digital works and their associated identification data on a memory of the remote server;

purchasing from the retail merchant a package including a card associated with a desired one of the digital works, wherein the card includes a card identifier, the card identifier being displayed on an outer surface of the card, the card identifier being a code that includes the desired digital work's identification data to uniquely identify the digital work and the package and card being purchased, the outer surface of the card or the package further displaying a description of the content of the digital work to be downloaded;

sending a request from a merchant node associated with the retail merchant to the remote server to set a status of the desired digital work as available for one-time access based on the card identifier of the card associated with the digital work, the remote server receiving the request and searching the digital works stored on the remote server for the desired digital work specified by the card identifier in the received request from the merchant node and setting the status of the desired digital work as available for access;

sending a request to access the desired digital work from the customer node through the communications network to the remote server, the request specifying the desired digital work's

identification data included in the card identifier displayed on the outer surface of the purchased package;

receiving at the remote server the request to access the desired digital work;

searching the digital works stored on the remote server for the desired digital work specified by the identification data associated with the card identifier displayed on the outer surface of the purchased card in the received request;

identifying the digital work based upon the received identification data;

transmitting the desired digital work from the remote server through the communications network to the customer node;

receiving at the customer node the desired digital work; and

storing the desired digital work on a memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server.

2. (Canceled).

3. (Canceled).

4. (Original) The method of claim 1, wherein the identification data for each of the digital works stored on the remote server includes a unique combination of an identifier and a password, and further wherein the unique combination of the identifier and the password are disposed on an inner surface of the package and sealed within the package, the method further comprising the step of:

after purchasing from the retail merchant the package associated with the desired digital work, opening the package to reveal the desired digital work's unique combination of the identifier and the password disposed on the inner surface of the package.

5. (Original) The method of claim 1, wherein the identification data for each of the digital works stored on the remote server includes a unique identifier, and further wherein a first portion of the unique identifier is displayed on an outer surface of the package and a second portion of the unique identifier is stored on a magnetic strip on the package, the method further comprising the steps of:

after purchasing from the retail merchant the package associated with the desired digital work, reading the second portion of the unique identifier from the magnetic strip on the package; and

printing the second portion of the unique identifier for the customer.

6. (Original) The method of claim 1, wherein the identification data for each of the digital works stored on the remote server includes a unique identifier, and further wherein a first portion of the unique identifier is displayed on an outer surface of the package and a second portion of the unique identifier is disposed on an inner surface of the package and sealed within the package, the method further comprising the step of:

after purchasing from the retail merchant the package associated with the desired digital work, opening the package to reveal the second portion of the unique identifier disposed on the inner surface of the package.

7. (Previously Presented) The method of claim 1, further comprising the steps of:

sending a request for customer registration data from the remote server through the communications network to the customer node;

inputting at the customer node the requested customer registration data;

transmitting the inputted customer registration data from the customer node through the communications network to the remote server;

receiving at the remote server the transmitted customer registration data; and

storing the transmitted customer registration data on the memory of the remote server.

8. (Previously Presented) The method of claim 1, wherein the communications network comprises the Internet.

9. (Previously Presented) A system for distributing digital works, each digital work having identification data associated therewith, the system comprising:

a. a package associated with a desired one of the digital works, wherein the package is purchased from a retail merchant, wherein the package includes a card having a card identifier, the card identifier being displayed on an outer surface of the card or package, the card identifier being a code that includes the desired digital work's identification data to uniquely identify the digital work, the outer surface of the card or package further displaying a description of the content of the digital work to be downloaded;

b. a communications link which includes a communications network;

c. a merchant node used by the retail merchant, the merchant node comprising:

i. memory;

ii. a processor connected to the memory of the merchant node; and

iii. equipment connected to the processor of the merchant node for coupling to the communications link which includes the communications network; and

iv. logic for performing the steps of:

(1) receiving the card identifier;

(2) sending a request from a merchant node through the communications network to set a status of the desired digital

work as available for one-time access based on the card identifier of the card associated with the digital work;

d. a customer node used by a customer, the customer node comprising:

i. memory;

ii. a processor connected to the memory of the customer node; and

iii. equipment connected to the processor of the customer node for coupling to the communications link which includes the communications network; and

iv. logic for performing the steps of:

(1) sending a request to access the desired digital work through the communications network, the request specifying the desired digital work's identification data included in the card identifier displayed on the outer surface of the purchased package;

(2) receiving the desired digital work through the public communications network; and

(3) storing the desired digital work on the memory of the customer node such that the digital work is available for subsequent use by the customer at the customer node after the customer logs off of the remote server; and

e. a remote server comprising:

i. memory;

ii. a processor connected to the memory of the remote server; and

iii. equipment connected to the processor of the remote server for coupling to the communications link which includes the communications network;

iv. the digital works and identification data associated with each of the digital works stored on the memory of the remote server; and

v. logic for performing the steps of:

(1) searching the digital works stored on the remote server for the desired digital work specified by the card identifier in the received request from the merchant node;

(2) setting the status of the desired digital work as available for access based upon the received request from the merchant node;

(3) receiving the request to access the desired digital work through the communications network from the customer node;

(4) searching the digital works stored on the remote server for the desired digital work specified by the identification data associated with the ~~package~~ card identifier displayed on the outer surface of the purchased package or card in the received request;

(5) identifying the digital work based upon the received identification data; and

(6) transmitting the desired digital work through the communications network to the customer node.

10. (Canceled).

11. (Canceled)

12. (Original) The system of claim 9, wherein the identification data for each of the digital works stored on the remote server includes a unique combination of an identifier and a password, and further wherein the unique combination of the identifier and the password are disposed on an inner surface of the package and sealed within the package.

13. (Original) The system of claim 9, wherein the identification data for each of the digital works stored on the remote server includes a unique identifier, and further wherein a first portion of the unique identifier is displayed on an outer surface of the package and a second portion of the unique identifier is stored on a magnetic strip on the package.

14. (Original) The system of c1aim 9, wherein the identification data for each of the digital works stored on the remote server includes a unique identifier, and further wherein a first portion of the unique identifier is displayed on an outer surface of the package and a second portion of the unique identifier is disposed on an inner surface of the package and sealed within the package.

15. (Previously Presented) The system of claim 9, wherein the communications network comprises the Internet.

16-19. (Canceled)

X. EVIDENCE APPENDIX

None

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XI. RELATED PROCEEDINGS APPENDIX

None.